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(2)
No. 08-1045

FILED MAY 15 2009
OFFICE OF THE CLERK SUPREME COURT, U.S.

**In The
Supreme Court of the United States**

CAROLYN YVONNE MURPHY TAYLOR

Petitioner,

v.

Walter Todd, Esq., in his official capacity as Assistant City Attorney and his individual capacity; Dana M. Thye, Esq., in her official capacity as Assistant City Attorney and her individual capacity; Hunter P. Swanson, Esq. in her official capacity as Assistant City Attorney and her individual capacity,

Respondents,

and

City of Columbia; Charles P. Austin, Sr., City Manager, Columbia, S.C.; Donnie Balzeigler, Code Enforcement Officer, Columbia, S.C; Larry McCall, Chief Code Enforcement Officer, Columbia, S.C; all in their official capacity and individual capacity,

Defendants.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth District

PETITION FOR REHEARING

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**QUESTION PRESENTED IN THE PETITION FOR
REHEARING**

Whether Municipal Prosecutors are entitled to absolute immunity from liability under 42 U.S.C. 1983 because the International Property Maintenance Code with strict liability offenses did not exist during the common law?

PARTIES

The caption of the case includes all parties to the proceedings in:

**THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH DISTRICT
No. 08-1372**

and

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
C/A No. 3:07-983-JFA-JRM.**

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PETITION FOR REHEARING

Petitioner Carolyn Yvonne Murphy Taylor respectively petitions this Court to reconsider the Petition for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fourth District filed August 25, 2008 and unpublished.

REASONS FOR GRANTING THE PETITION FOR REHEARING

Municipal Prosecutors are not entitled to absolute immunity from liability under 42 U.S.C. 1983 because the International Property Maintenance Code with strict liability offenses did not exist during the common law.

The doctrine of stare decisis, meaning "to stand by things decided" is a doctrine of precedent requiring a court to follow earlier judicial decisions when the same points arise in litigation in order to ensure consistency and predictability within the courts. (Black's Law Dictionary 8th Edition 2004)

This case does not follow the principle of stare decisis. It is not consistent with the landmark case, Imbler v. Pachtman, (424 U.S. 409 (1976)). It is not predicated on legal principles of common law for prosecutors who are entitled to absolute immunity in Imbler. Common law principles cannot serve as the basis for a decision of absolute immunity for municipal prosecutors of strict liability offenses in the statutory International Property Maintenance Code ordinance (IPMC). The IPMC did not exist during common law.

"Criminal liability is normally based upon the occurrence of two factors, an evil-meaning mind and an evil-doing hand." United States v. Bailey, 444 U.S. 394 (1980) If either of these factors is missing, no crime has occurred.

Subsequently, under criminal law the standards for prosecuting crimes included actus reus and a culpable state of mind, which included purposeful or intentional conduct, willfulness, knowledge, and unintentional conduct: recklessness or criminal negligence and simple negligence. (McAninch, Fairey, and Coggiola, *The Criminal Law of South Carolina* 5th Ed. 2007),

Some strict liability offenses dispense wholly with the mental element, and conviction is possible on proof of an act for which the defendant is responsible without regard to his mental state. Such crimes are wholly creatures of statute, **unknown at common law**. (McAninch, id)

A violation of the IPMC is a strict liability offense. (App. at p.14 §106.3 in Pet. for Cert.) There is no mens rea requirement for strict liability offenses as defined by the IPMC. The definition states: "Strict Liability Offense. An offense in which the prosecution in a legal proceeding is not required to prove criminal intent as a part of its case. It is enough to prove the defendant either did an act which was prohibited, or failed to do an act which the defendant was legally required to do." (App. at p.16 in Pet. for Cert.)

Petitioner was charged with violating the IPMC on March 11, 2005 by the code enforcement officer. (App. at p.20 in Pet. for Writ.) Section 106.3 of the IPMC is the only authority for prosecuting the Petitioner for a violation of the 2000 IPMC. The code enforcement officer issued Petitioner a Warning Notice that did not comply with §107.2 of the IPMC on December 9, 2004. (App. at p.18-19 in Pet. for Cert.) The prosecutors, as well as the Courts,

only need to comply with the directives as written. The language of the IPMC for the notice of violation is very clear and unambiguous, and is mandatory as opposed to being discretionary. (App. at p.15 §107.2 in Pet. for Cert.)

There is a significant difference in the role of the prosecutor between Imbler and the role of these municipal prosecutors. The Imbler prosecutor was a state prosecutor who acted initiated the case and pursued a criminal prosecution. The municipal prosecutors can never initiate a case. (S.C. Code Ann. § 56-7-80 (1976)) (App. at p.14 §106.3 in Pet. for Cert.) They can only pursue a case after a defendant requests a jury trial. Subsequently, they only need to prove beyond a reasonable doubt that Petitioner did not comply with the mandated notice of violation. (App. at p.108 in Pet. for Cert.)

The 14th Amendment Section 1 states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where-in they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

There is nothing that prohibits Imbler from being overruled where, under the 14th Amendments, there is a clearly established, guaranteed constitutional right to a proper notice of violation before the prosecution can even begin for a strict liability offense. (App. at p.14 §106.2 in Pet. for Cert.)

The circumstances that gave rise to the common law principles of absolute immunity when initiating and pursuing the case in Imbler are not the same for absolute

immunity in the judicial phase of a case under the IPMC with a violation being a strict liability offense...

The municipal prosecutors failed to conform to clearly established procedure and law as required for prosecution of the strict liability offense in section 106.4 of the IPMC ordinance. The mandated notice of violation is essential for a conviction of IPMC violations. Fairness is imputed in the judicial phase through an adequate notice of violation. Petitioner received an inadequate notice of violation that does not comport with the requirements of 107.2. (App. at p.18-19 in Pet. for Cert.)

The IPMC has been adopted in at least 35 states. (www.iccsafe.org) An analysis of a few cases from other states involving the IPMC reveals that a change is necessary to uphold the judicial system as being a fair, just, unbiased entity which protects the constitutional rights of each and every citizen regardless of any religious, racial and cultural differences.

A railroad company was charged with violating the IPMC for trash and debris on the railroad tracks. Winchester & Western Railroad v. City of Martinsburg, 2007 U.S. Dist. LEXIS 55158, 2007) This case is absurd because the expresses intent of the IPMC is for existing structures. (App. at p.13 §101.3 in Pet. for Cert.) The notice of violation to the train company must contain a correction order allowing a reasonable time to make repairs and improvements required to bring the dwelling unit or structure into compliance with provisions of this code. (App. at p.15 §107.2 #4 in Pet. for Cert.)

There is no way a train can be mistaken for a dwelling unit or structure as defined in the IPMC. (App. at p.16 in Pet. for Cert.) Subsequently, it would be undeniable that an inadequate notice of violation was issued or perhaps a notice of violation was not issued.

In Good v. Trish, 2007 U.S. Dist. LEXIS 12203 (M.D. Pa., Feb. 22, 2007), the dispute in this case centers around the efforts of the Steelton Borough Code Enforcement Office to bring Good's property into compliance with local ordinances. Such efforts began on July 11, 2006, when defendant John Trish, a property maintenance officer for Steelton Borough, sent Good a letter informing her that her sidewalk was in "disrepair" and violated "the provisions of the 2003 International Property Maintenance Code and/or Borough of Steelton's Codified Ordinances." The letter stated that Good must repair her sidewalk by August 12, 2006 or face a citation. The letter further informed Good of her right to request a hearing regarding the alleged violation by filing a written petition within ten days of the letter's receipt. A notice of violation to Good must contain a correction order allowing a reasonable time to make repairs and improvements required to bring the dwelling unit or structure into compliance with provisions of this code. App. at p.15 §107.2 #4 in Pet. for Cert.) The letter to Good did not meet the requirements of §107.2. A sidewalk is not dwelling or structure.

This court has never addressed the question of whether a prosecutor in the judicial phase of case is entitled to absolute immunity when the notice of violation, a well established constitutional right in a strict liability offense, was violated before the case began by someone other than the prosecutor. The notice of violation is the essential element of proof in this strict liability offense.

Judicial gamesmanship is apparent from the Municipal Court to the District Court to the Court of Appeals. At all stages there is no semblance of fairness in the lower courts. "Justice" has lost her blindfold and there is nothing a citizen can do to restore trust and faith in our judicial system. This Court has a duty and responsibility to all citizens to ensure that "Justice" is blind and fairness will

always permeate in the judicial systems across the United States.

"The concept of due process is not final and fixed and the reach of the guarantee of due process into criminal prosecutions is not susceptible of exact definition. As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. Thus, the 14th Amendment is in this sense against criminal trials in state courts being conducted in such a manner as to amount to a disregard of fundamental fairness, since the concept of fairness is inherent in the requirement of due process of law....." (21 A Am. Jur. 2D §906 (2008))

It is up to this Honorable Court, individually and collectively, to guarantee due process, fairness, and justice for all, all the time. It is not fair when municipal prosecutors do not have the mandated notice of violation necessary for a conviction of the IPMC strict liability offense. It is not fair for municipal prosecutors to arbitrarily change the expressed intent from existing building and structures to yard beautification when they are suppose to be advocates of the IPMC. To allow these Respondents to hide behind the cloak of absolute immunity derived from common law is not fair. It is not fair! It is not fair! It is not fair!

As discussed above, the Respondents are not entitled to absolute immunity from liability under 42 U.S.C. 1983 under *Imbler v. Pachtman*.

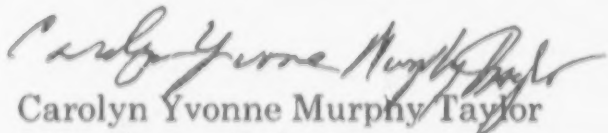
CONCLUSION

The doctrine of stare decisis has become unsound as a rule of law for municipal prosecutors in the circumstances of the modern day IPMC ordinance when the violation is deemed a strict liability offense. Imbler v. Pachtman and the role of IPMC prosecutors' roles are substantially different and have different points of reference necessary for a conviction. The elements of proof for a strict liability offense and a felony offense are totally different.

For the foregoing reasons, Petitioner respectfully prays that this Court will reconsider the Petition for a *writ of certiorari* to review the judgment of the United States Court of Appeals for the Fourth Circuit which affirmed the District Judge's order which accepted the U.S. Magistrate Judge's Report and Recommendation to grant absolute immunity to the Defendants in their individual capacities, and dismissed the defendants as parties in their official capacities on grounds of redundancy.

May 15, 2009

Respectfully submitted,



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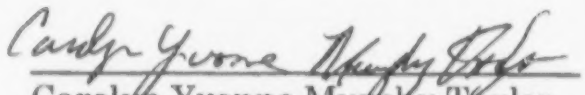
Petitioner, *Pro Se*

CERTIFICATE

I, Carolyn Yvonne Murphy Taylor, certify that this Petition for Rehearing is restricted to the grounds specified in Supreme Court Rule 44(2) and that it is presented in good faith and not for delay.

May 15, 2009

Signed,


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